

## الإسلاموفوبيا: التمييز ضد المسلمين في الولايات المتحدة الأمريكية

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### الملخص

لا شك أن التمييز ضد المسلمين كان متواجداً في الولايات المتحدة الأمريكية منذ العديد من العقود كأي أقلية أخرى، إذ كانوا عبيداً في البداية ومن ثم كان التمييز وما زال ضدهم في العديد من جوانب الحياة كالتعليم والعمل والمشاركة في العمل القانوني في المحاكم. كما وقعت العديد من الأمور التي أدت إلى تصاعد التمييز ضد المسلمين وخلق مصطلح "إسلاموفوبيا"، والذي يعني الخوف من الإسلام أو التحيز ضده، كما كانت النساء المسلمات دائماً ضحية هذا التمييز، وبالأخص بعد هجمات الحادي عشر من سبتمبر لعام 2001. وعلى الرغم من أن التعديل الأول لدستور الولايات المتحدة يضمن حرية التعبير وحرية ممارسة الأديان، إلا أن المحاكم قد فشلت في حماية حق المرأة الذي يكمن في ارتداء الحجاب، بسبب سوء فهم الضرورة الدينية التي تفرض ارتداءه. كما تعرضت النساء المسلمات أيضاً للتمييز في مجالات أخرى كالتوظيف في المجالات المختلفة، على الرغم من حظر التمييز في العمل وبالأخص بعد إقرار قانون الحقوق المدنية في عام 1964، والذي حظر على صاحب العمل رفض توظيف أو اتخاذ أي إجراء يتعلق بأمور العمل، بانياً قراره على أساس ديني بحت.

الكلمات الدالة: تمييز، مسلمين، تعليم، توظيف، حجاب، إسلاموفوبيا.

## Islamophobia: Discrimination Against Muslims in the USA

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### Abstract

Muslims have been discriminated against as any other minority in America for many decades, by being slaves at first and discriminated against in many life aspects such as education, work, and the ability to participate in the legal process in the courtrooms. Many incidents occurred where discrimination against Muslims escalated and the term "Islamophobia" was created which means the fear of, hatred of, or prejudice against Islam. Muslim women were always the easy target of this discrimination, especially after September 11 attacks. Although The Free Exercise Clause of the First Amendment of the United States Constitution guarantees free speech and the free exercise of religion, courts have failed to protect women's right to wear hijab due to misunderstandings about the religious necessity of hijab. Muslim women were also discriminated against in other areas such as employment in different fields, although employment discrimination is forbidden especially after passing the civil rights act in 1964, which made it unlawful for the employer to suspend or refuse to hire or perform any other activity solely based on religion.

**Keywords:** Discrimination, Muslims, Education, Employment, Hijab, Islamophobia.

## **I. Introduction**

It is a fact that Muslims have been discriminated against in so many life aspects for a long time and still suffer from this horrible phenomenon. This discrimination has made people suffer even if they stay locked up in their houses. Families suffer when they send their children to schools, women suffer everywhere if they were hijab, men suffer from being called terrorists if they have a beard and for the way they look, and every Muslim suffer from the way people react when they know about his/her religion.

It is important for those who suffer from this phenomenon to go to courts and seek justice so that precedents will be created and hopefully in favor of those who cannot enjoy peace of mind and normal life without being harassed or hated without being known.

### **The problem of the Study**

The main problem is to find out how deep discrimination is in the US by answering the following problems:

- Which fields do Muslims suffer the most from discrimination?
- Does gender play a role in escalating this discrimination?
- Did courts stand for Muslims who suffered from such discrimination and were there any judicial precedents relating to this problem?

### **Objectives of the Study**

Studying the difference in Muslims' treatment before the attacks of 09/11 and afterward.

- Discussing the discrimination that women suffer in employment and education.
- Casting a look at the contradiction between what is written in the US constitution and what is happening in real life, especially with Muslim women.

### **Importance of the Study**

It is important to defend people no matter what their religion, race, or color is. Muslims all around the world deserve to be respected, and not treated according to some minorities' horrible acts. Islam was and still is a great nation, which treats people kindly and respectfully, since Islam's holy book, Al Quran, commands them to do so and to believe in the one God, who creates every human being equally and without giving preference to any Muslim at the expense of the other. It is also important for everyone to know how Muslims get to be treated in the US, the country that calls for human rights to be legislated and recognized in all world countries. This study deals with some of the many discriminations in the US, and not only Muslims suffer from, but a lot of other people who are not white Americans, and only because they are different from what Americans believe is right.

### **Methodology of the Study**

This paper will discuss the history of Muslims in the United States in two parts. The first part is about how they first came, and how they were treated in the past. It will also discuss the changes that occurred after the attacks of 09/11. The second part will discuss the occurrences where Muslim women were discriminated against because of their religion and the way they

dress, and the focus will be on women since they are the group that faces most of the hardships. This part will talk about how women were discriminated against in employment, education, and other areas. The focus will be on the first and the fourteenth amendment of the US constitution, title VII of the civil rights act, and counterarguments to the related court decisions.

## II. History of Islam in America

### • Before September 11, 2001:

The history of American Muslims goes back more than four hundred years. The first arrival of Muslims in America occurred in the 17th century with the arrival of slaves from Africa where almost a quarter of them were Muslims. Muslims also came from Spanish colonies. Although enslaved people were denied freedom of religion, many did practice their faith in secret and pass it on to their children. The Founding fathers considered the Muslims living in the US and sought to include Islam as they established the principles of religious liberty (The Religious Freedom Education Project of the First Amendment Center and the Interfaith Alliance Islamic Understanding American Muslims in the United States, n.d.).

Back then, before the ratification of the constitution, Jefferson, while campaigning for religious freedom in Virginia, demanded recognition of the religious rights of Muslims among other religions. The founding fathers also discussed the issue that a Muslim can probably become a president in the future at a state convention in North Carolina in 1788, where some of the participants opposed the ratification because of article six of the constitution, which states that no religious test is needed for holding a governmental position, which allows a Muslim to become president one day. The constitution was ratified after all, and that clause stayed. The next significant wave of Muslim immigrants began in the mid-19th century. During the late 19th century until the 1920s, large numbers of Arabs, mostly from Lebanon and Syria, arrived in the United States, where many of them were Muslims. In this period, and until the 1930s, African Americans also began to embrace Islam in response to the radical dislocations and racism they experienced before and during the Great Migration (the movement of disenfranchised southerners to industrial regions in the North). During this period, many organizations have been established supporting Islam, especially between 1910 and 1920, where it was called Marcus Garvey's Negro World, who was a charismatic Black leader who organized the first important American Black nationalist movement and was the president of the United Negro Improvement Association (UNIA) that was established in New York in 1914, that first popularized the link between Pan-Africanism and Islam. Several of these African American Muslim associations would go on to have a significant impact on the face of Islam in America by promoting the idea of Islam as a lost part of Black African heritage. Other organizations were created during this period, such as the Nation of Islam, which was established by W.D. Fard in 1930 (who disappeared from public records in 1934) and helped lay the groundwork for the emergence of Islam as an influential part of the Black Power movement and the broader civil rights movement of the 1950s and '60s. In 1924, the US Congress passed the National Origins Act, which restricted immigration from Asia and other Muslim-sending regions and thus stemmed the flow of new Muslim arrivals. Many Americans know the story of how the shared experiences of World War II helped lead African Americans to demand equal rights that recognized their role in defending the country during the war. It turns out a similar phenomenon happened with Muslim Americans as well — and the two communities, at this point in American history, overlapped considerably. After the passage of the Immigration and Nationality Act of 1965, greater numbers of Muslims began migrating to America along with many other immigrants with diverse backgrounds. The change in immigration laws allowed highly skilled professionals to enter the U.S. Many Muslims who

came during this period were from the Middle East and South Asia (India, Pakistan, and Bangladesh). After they arrived in 1965, the treatment of Muslim Americans was shaped by a series of geopolitical encounters between the United States and various Muslim nations. In 1967, the Six-Day War, a significant event in the ongoing Arab-Israeli conflict, brought negative portrayals of Arabs into the American media and fed into the worst stereotypes about Islam. The 1970s oil embargo against the United States further exacerbated harsh views of Muslims and the Middle East. Long gas lines angered Americans, and Muslims in the United States felt the brunt of their rage. At the end of the decade, the Iranian Revolution and the US hostage crisis would captivate the world and provide yet another instance of "violent" Islam's clash with the West (Williams, 2017).

Gradually, Islam became to feel a bit more familiar in American life. Senate and millions of immigrants began arriving on America's shores toward the end of the 19th and especially the early 20th centuries, where Muslim immigrant communities in America started to establish small, local community organizations across the country. The Immigrants included tens of thousands from Muslim-majority countries in the Middle East, South and Central Asia, and Eastern Europe. They were spurred in part by the Industrial Revolution that erupted once America finally emerged from the ashes of the Civil War and Reconstruction era. As the 20th century progressed, Muslim immigrants who had already arrived on America's shores, as well as the African Americans who had connected with the religion (or, in perhaps some cases, reconnected with long-lost Muslim roots), began playing a much more active role in American politics and society. Today, we rightly remember and commemorate the role of Christian leaders, most famously Martin Luther King Jr., in the civil rights struggle. But Islam played a role as well, especially during the Civil War, where Muslim Americans fought and died in World War II and Vietnam, and Over 15,000 Arab Americans, some of whom were Muslim, fought for the U.S. in North Africa, Europe, and Asia during the Second World War.

#### • **September 11, 2001, and the Terrible Aftermath:**

The terrorist attacks of September 11, 2001, were a watershed moment in the history of Islam in America. The largest attack on American soil since the bombing of Pearl Harbor in 1941 had been conducted by extremists acting in the name of Islam. It changed the nature of Muslim relations in the United States, and it opened a debate that is rarely acknowledged but is still going over whether Muslim Americans are accepted as equal citizens. Although Muslim religious leaders and organizations in the United States and around the world immediately denounced the attacks as un-Islamic, many Americans began to fear, distrust, and even hate their Muslim neighbors. The FBI reported a major increase in anti-Muslim hate crime incidents in 2001. For their part, Muslim Americans tried to reassure their fellow Americans that they were as peaceful and patriotic as any other red-blooded American. After that, across the country, mosques and Islamic centers flew the American flag and opened their doors to non-Muslims. Muslims sought to educate their non-Muslim neighbors about Islam and reassure the public about their loyalty to the United States and their love of the American dream. Many Americans visited mosques for the first time, often attending information sessions on Islam in which Muslim leaders explained that Islam is a peaceful religion that does not condone terrorism.

The 9/11 attacks, as well as the subsequent wars in Iraq and Afghanistan, also bred American interest in Islam and the Middle East in academia and government. As college courses, news specials, documentaries, and books proliferated, millions of Americans became educated about the religion, people, traditions, and historical lands of Islam.

Unfortunately, this increased appetite for knowledge about Islam also opened the door for the emergence of the "Islamophobia industry," as it is sometimes known. Individuals with anti-Muslim agendas published books, quasi-academic journals, and articles; established websites, blogs, and nonprofit "research" institutes; and appeared on cable news shows to spread the "truth" about Islam, which they portrayed as violent, sinister, and un-American. Though purporting to be "experts" on Islam, these individuals presented heavily biased and often factually inaccurate information to the public that often veered into outright bigotry and conspiracy theories.

Many Americans tend to accept the hateful, violent vision of Islam presented by these experts. This distorted understanding of Islam took root in many pockets of American society, helping lay the groundwork for the climate of fear and hatred of Muslims.

The term "Islamophobia" gained its first notoriety in 1997 and is defined as the unfounded hostility towards Islam, but after the 09/11 attacks, the hostility was provoked against Muslims, and it represented the start of the second reification of Islamophobia in America. Shortly after 9/11, the federal government enacted a corpus of legislation targeting Muslims and Arabs in the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 ("the PATRIOT Act"). The new legislation granted wide-sweeping authority to the federal government to limit personal freedoms to conduct its War on Terror. This authority included, inter alia, authorization for unilateral executive detention, various privacy invasions in the public and private sphere, and warrantless wiretaps. In addition, the government launched two costly wars in Afghanistan and Iraq. Relying on the legitimate uncertainty at the time, lawmakers and media pundits directed the nation's fear of another attack toward Muslims and those who had physical "Muslim" characteristics, to convince the public that such measures were both valid and necessary to prevent another terrorist attack. The 09/11 attacks also transcended political affiliation, one prominent conservative columnist, Ann Coulter, wrote on September 12, 2001, "We should invade their countries, kill their leaders, and convert them to Christianity. We were not punctilious about locating and punishing only Hitler and his top officers. We carpet-bombed German cities; we killed civilians. That's war. And this is war." Politicians, too, appeared to be competing as to who could look strongest on national defense. Attorney General John Ashcroft, one of the most vociferous critics of Islam in public office at the time, said, "Islam is a religion in which God requires you to send your son to die for him. Christianity is a faith in which God sends his son to die for you." In a speech to the U.S. Conference of Mayors, he stated: "Let the terrorists among us be warned: if you overstay your visa--even by one day--we will arrest you. If you violate a local law, you will be put in jail and kept in custody for as long as possible. We will use every available statute. We will seek every prosecutorial advantage."<sup>101</sup> Senator Saxby Chambliss, a Republican Senator from Georgia, went even further, stating that homeland security would be improved by turning the sheriff loose to "arrest every Muslim that comes across the state line." This was a clear message that politicians were provoked and were trying to enhance the movement toward treating Muslims in America more strictly, as they considered the attack something that represents all Muslims, and all of them must take responsibility for them, even if they have nothing to do with them, as long as they are Muslims, they should be held responsible. Perhaps the most notorious and destructive comment was President Bush's description of the War on Terror as a "crusade," a statement that outraged Muslims around the world and led to intense damage control efforts on the part of the White House. The comment nonetheless suggested that the collective enemy was Islam, and further, to some Muslims, it engendered strong notions of the Middle Ages when Christian armies embarked on numerous battles with an expressed goal of conquering Muslim lands. According to one poll, less than half of the respondents during the period shortly after 9/11 believed that American Muslims

were loyal to the United States. In one particularly troubling Gallup Poll shortly after 9/11, one-third of respondents supported such drastic measures as the internment of Arab Americans or the special surveillance of Arabs living in the United States. This biased public perception was no doubt a necessary precursor to the large-scale encroachment on civil liberties that targeted American Muslims in the following months and years (Ali, 2012).

### **III. Discrimination Against Muslims in America:**

Muslims, as stated above, have been living in the United States for an awfully long time, a lot of them were African Americans, and for this exclusive group, they were discriminated against because of their religious beliefs other than their color or their origins. In addition, Muslim women have been suffering due to the way they dress and because of wearing hijab, and these women will be the focus of the following discussions.

#### **• Employment Discrimination Against Muslims:**

Federal laws do not prohibit all kinds of employment discrimination; however, congress passed some laws proscribing this kind of discrimination. The first modern statute was passed by congress in 1963, the Equal Pay Act, which made it unlawful to pay workers of one sex at a rate different from that paid to other sex if they perform the same duties. In addition, the most important act that was passed was the 1964 civil rights act, which included eleven titles, including title seven, which prohibited employment discrimination based on race, color, sex, religion, and national origin, which means prohibiting discrimination against Muslims (Brooks, 2011).

In 1972 Congress amended Title VII of the Civil Rights Act of 1964 to add as a distinct obligation of employers the duty to accommodate the religious practices of employees to the extent that they can do so without undue hardship. Since Congress did not define either the terms "reasonable accommodation" or "undue hardship" there has been considerable litigation interpreting these terms, the bulk of which has involved applying the duty of reasonable accommodation and another focus of litigation has been the right of employees to wear clothes or beards for religious reasons, such as women wearing Hijab (American law reports, n.d.).

Many cases have the issue of discrimination violating title seven of the civil rights act. An example is the case of *E.E.O.C. v. Abercrombie & Fitch Stores, Inc*, in this case, a woman named Elauf applied for a job with Abercrombie & Fitch, which operates several lines of clothing stores. The company's "look policy" prohibits employees from wearing "caps," without defining that term and the applicant was a practicing Muslim, who wears Hijab. The employer refused to hire the woman, because of her Hijab, although she was approved when on her interview for the job, and the only concern was her hijab, which they believed was a conflict with the dress policy. The Equal Employment Opportunity Commission (EEOC) filed suit on Elauf's behalf, alleging a violation of Title VII of the Civil Rights Act of 1964, which, inter alia, prohibits a prospective employer from refusing to hire an applicant because of the applicant's religious practice when the practice could be accommodated without undue hardship. The EEOC prevailed in the district court, but the circuit court reversed on the ground that liability only attaches when the applicant provides the employer with actual knowledge of her need for an accommodation (*E.E.O.C. v. Abercrombie & Fitch Stores*, 2015).

Title seven of the civil rights act prohibits two categories of employment categories as it is unlawful to either, refuse to hire or to discharge any individual, or otherwise discriminate against any individual concerning his religion, or, to limit, segregate, or classify his employees

or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's religion. The Supreme Court of the United States held that an applicant only needs to show that her need for an accommodation was a motivating factor in the employer's decision. The court explained the word "because of" in title seven and explained that the term is relaxed in this context, and the act prohibited also the motives regardless of the employer's knowledge, unlike the term used for example in the Americans with Disabilities Act of 1990, which explicitly stated "reasonable accommodations to the known physical or mental limitations". The court added that Congress defined "religion," for Title VII's purposes, as including all aspects of religious observance and practice, as well as belief. Thus, religious practice is one of the protected characteristics that cannot be accorded disparate treatment and must be accommodated. This was fair treatment by the court, which prohibited any employer from refusing to hire anyone based on his religious beliefs or practices, which is believed to be the essence of the act, not to add anything to it when courts interpret it so that employers can argue something was not intended by the congress when it passed such act. In addition, even if there was a policy that prohibits a certain look in a certain type of employment, the policy itself should be held a violation of title seven. It is understood that there is employment that requires a specific dress code, like women working for modeling and other similar jobs, but in places where employment does not require such practices, there should be no restrictions on women's dress codes other than being "well dressed" and fit with common standards. Wearing the hijab does not undermine a woman and does not reflect something specific in her personality or respect for others, but on the contrary, other religions require certain dress codes for women, because it is more respectful and more elegant for a woman to stick with a certain dress code.

Mormons for example, have a remarkably similar dress code for women and state that "Prophets of God have continually counseled His children to dress modestly. When you are well-groomed and modestly dressed, you invite the companionship of the Spirit, and you can be a good influence on others. Your dress and grooming influence the way you and others act. Never lower your standards of dress. Do not use a special occasion as an excuse to be immodest. When you dress immodestly, you send a message that is contrary to your identity as a son or daughter of God. You also send the message that you are using your body to get attention and approval. Immodest clothing is any clothing that is tight, sheer, or revealing in any other manner" (Corinthians 3:16–17, Book of Mormon). This is an exceptionally good illustration of how women should be dressed modestly, and by doing so, this will not make people think that the woman is undermined, or not given her full rights, but treated as a precious human being.

Moreover, in the case of *E.E.O.C. v. GEO Group* (C.A.3 (Pa.),2010), The Equal Employment Opportunity Commission ("EEOC") appeals from the decision of the District Court granting the summary judgment motion of the defendant, the GEO Group, Inc. ("GEO"). GEO is a private company that was contracted to run a Correctional Facility (the "Hill Facility"). The EEOC filed its complaint according to Title VII of the Civil Rights Act of 1964, on behalf of a class of Muslim women employees, alleging that GEO violated Title VII's prohibitions on religious discrimination when it failed to accommodate the class members by providing them an exception to the prison's dress policy that otherwise precluded them from wearing Muslim head coverings called khimars at work, as the dress policy that provided that "no hats or caps will be permitted to be worn in the facility unless issued with the uniform ... documentation Only items approved by the Warden will be authorized.", on the ground that this was to prevent the introduction of contraband into the prison facility and to avoid misidentification. GEO moved for summary judgment, arguing in part that a deviation from its policy would cause it an undue hardship by compromising its institutional interests in security and safety. The Circuit court in this case held that the prison has an overriding responsibility to ensure the safety of its prisoners, its staff, and visitors and that the prison officials have the

unenviable task of preserving order in difficult circumstances. It also held that they relied on the supreme court decision in the case of *Bell V. Wolfish*, where the Supreme Court cautioned the federal courts to make only limited inquiry into prison management because of “the wide range of ‘judgment calls’ that meet constitutional and statutory requirements are confided to officials outside of the Judicial Branch of Government.” The Court then decided that it must comply with the Supreme Court’s direction that they will not substitute their judgment for that of corrections facility officials and affirmed the District Court’s order granting summary judgment to GEO (*E.E.O.C. v. GEO Grp.*, 2010). The GEO in this case argued that Wearing Khimar, which is similar to Hijab, will compromise the prison’s interests in safety and security, because there have been several occasions, where employees wearing hats participated in the contraband and delivering drugs and other violent equipment to the prisoners, so to make sure these things will not happen, and as the court stated, the prison administration must not wait for the harm to occur and then prevent it, but they can put policies to prevent these things from happening in the future. The language of title seven is noticeably clear where it stated that it is unlawful to fire an employee for religious reasons, and the legislature did not exclude some employment fields, where this act will not be applicable. Also, the three employees who were told to stop wearing their Khimar to comply with the prison’s new policy did not have any history of violations or any attempt to deliver drugs or any other things to prisoners. The idea of wearing hijab or khimar is for purely religious reasons, and women who respect their religion cannot by default commit such violations. Delivering drugs can be done in many certain ways, especially for women, and in prisons, there are many ways where employees can be searched, and the woman who can smuggle drugs in her “Hijab,” can contraband drugs in her inside clothes. The GEO also argue that one of the women contended with wearing a piece of cloth that cover her hair only, but religious practice cannot be defined from an individual perspective, and the court did a good job when it declined to comply with the GEO argument, and stated that “We are unwilling to delve into any matters of theology, and will therefore decline GEO’s invitation to decide on our own what might constitute a reasonable substitute for a khimar under the Islamic faith”.

Furthermore, the EEOC argued that GEO made neither a genuine attempt nor a reasonable offer of, an alternative method for accommodating the wearing of the khimar, which is the very least that GEO can do. Even if there is a high significance on the issue of the safety of the correctional facility, and maintaining peace inside of it, all entities must comply with the provision of the civil rights act and figure out something to help these women. It is always justified to choose what is called in criminal law, the lesser evil, but as mentioned in the case, none of these women have ever violated or even attempted to do any criminal activity within their employment term in the prison. Also, as stated in the new prison’s policy, the warden can authorize some of the employees to wear hats or caps, and it is believed that giving such exception to these three women will be fair, and it could be done in a contingent way, as if there was an instant where drugs or any other smuggling happened from the outside to the inside of the prison, these women will be the first to be questioned. This way, all these Muslim employees will understand that they were authorized to practice their religion by wearing their hijab, and at the same time, they must comply with a high standard practiced by the prison. Moreover, the GEO argued that the costs that it would incur were it to adopt the accommodation requested by the Muslim employees of allowing them to wear khimars would cause an undue burden on prison resources, and the court agreed in part and stated that adopting the proposed procedure would necessarily require some additional time and resources of prison officials. This is very unconvincing, because the same procedures taken to search any other employee, will be the same as searching a Muslim employee wearing hijab since the hijab is only a dark piece of cloth that covers the woman’s head, neck, and part of her chest, not a steel helmet where no electronic method can detect what is underneath. This case occurred after the

civil rights act has passed, and even if it was a facility that requires elevated levels of security, employers cannot put policies that violate this act and discriminate against some religious practices and then justify these violations for some other standards. There was no single evidence that showed these women ever violated any law, and neither was there any precedent where Muslim women were using their hijab for an insincere purpose. In addition, another way to find alternatives to such policies is to look for other countries, especially Islamic countries, where many employees in correctional facilities are women and wearing Hijab, and no contraband has happened due to the effective measures taken by these prisons, without asking these women to take off their Hijab (E.E.O.C. v. GEO Grp, 2010).

### • **Discrimination Against Muslims in Education:**

Although there is almost no case law about discrimination against Muslims in education, there were a lot of incidents, where Muslim women were banned from wearing hijab, including students and teachers, and none of them were tried in courts. The first amendment in the US constitution provides that Congress makes no law respecting an establishment of religion or prohibiting its free exercise. It protects freedom of speech, the press, assembly, and the right to petition the Government for a redress of grievances, and one of the significant practices of Islamic religion for women are wearing the hijab. On September 11, 2003, an 11-year-old Muslim girl was suspended for the second time from the Ben Franklin Science Academy in Muskogee, Oklahoma, for wearing hijab. The school officials based the suspension on the school's dress code aimed at preventing gang-related activity by prohibiting hats and other head coverings. A month later, the student was finally allowed to return to school wearing her hijab, and the school changed its dress code to allow students to wear hijab and other religious head coverings. This dress code change occurred because of a negotiated six-year settlement agreement between the school district and Justice Department which was filed in the United States District Court in Oklahoma. Similar incidents occurred in other states, such as the West Jefferson High School in Louisiana, where a teacher pulled on the hijab of a 17-year-old student but was later discharged from the school and the case did not go to court. Such occurrences must not be ignored, as the school must take responsibility for the teacher's action, as this is not only a case where one of the employees, and accordingly the school itself, violated the first amendment of the constitution, but also assaulted a young girl, solely on the ground that she is Muslim and wearing Hijab. Another case where a woman was banned from wearing a hijab was at the elite Marine Academy of Science and Technology ("MAST") and was unable to attend the school because MAST would not permit her to wear hijab. The MAST program requires the students to wear uniforms supplied by the United States Navy twice a week. It was later suggested by the MAST that Mona wear a bandana or wig to hide her hair, however, it was later deemed unacceptable because it was still partly visible under her hat. The principal then told her that the bandana violated the regulations from the Department of the Navy, even though the academy permits yarmulkes, the skullcaps worn by Jewish men, to be worn, but no similar exceptions were made for the hijab (Abdo, 2008). The standard that should be understood of the equal protection clause is that all persons must be treated equally and giving one exception to Jewish people and not doing the same for Muslims, is a clear violation of the equal protection clause. MAST found that the woman lacked respect for the college uniform, but not for the Jewish who was given an exception to wear the skullcaps. The problem in these cases is that they never go to courts, even though when compared to other forms of segregation, for example between men and women, one can argue that what MAST did was a clear violation, when they gave an exception to Jewish and not to Muslims, and this is similar to what happens for example in the VMI case, where the court held that the Virginia Military school is required to provide an exceedingly persuasive justification for policies that discriminate against women. It also stated Virginia has not shown an exceedingly persuasive justification for excluding all

women from VMI's leadership training, and the same can be said if there was a MAST case, where there was no justification for banning the hijab. VMI in their case fell short of establishing the exceedingly persuasive justification required for a sustainable gender-based classification, and the argument that was made by MAST is that hijab was disrespectful to the academy uniform, which if told in court, will be found exceedingly unpersuasive.

In addition, some states have statutes that prohibit teachers from wearing hijab in public schools, which is a clear violation of the First Amendment, which made it unlawful to prohibit the free exercise of religion. In 1985, Oregon had a statute prohibiting teachers in public schools from wearing any religious dress while performing their duties, and whoever violates this statute, shall be suspended from employment. A case was tried according to a violation of this statute, where a woman called Janet Cooper, who was a teacher in the Eugene public school, started wearing hijab and some white religious clothes, and faced suspension from the school because she violated the above-mentioned statute. In the case of *Cooper v. Eugene School Dist. No. 4J, 76 Trapp. 146 (Or.App.,1985)*, the court held that affirmed that the teacher violated the statute, based on the ground that by wearing religious clothes, the teacher will give the impression that the school supports the teacher's beliefs. The court added that the teacher has the right to practice her religion, however, this cannot be done at the expense of impliedly showing that the school supports her religion (*Cooper v. Eugene Sch, 1986*). In this case, the appellate court did not argue whether the school violated the first amendment by banning the teacher from wearing hijab, but the constitutionality of the sanction that was imposed by the school on the teacher. Many Christian teachers wear a cross while performing their duties, and many Jewish have the stars of David, however, there was no case law prohibiting these teachers from doing so. Islam has the Hijab as a religious symbol, and as noted, woman practice Islam by wearing it, so if the constitution state that all persons must be treated equally, and no one shall be denied the free practice of his/her religion, a woman should not be deprived of their right of wearing hijab. A Jewish teacher wearing a necklace with a David star does not give the impression that the school supports his religion; neither does a Christian teacher with a cross around her neck give the impression that the school supports Christianity. These actions cannot be justified on these grounds because this shows nothing but a clear manipulation and hypocrisy, and a clear message that when it comes it Muslims, a different treatment shall be imposed. The preamble of the US constitution starts with "We are the people of the United States," it does not say Christians or Jewish or any other religion, it is generalized because all persons, no matter what their beliefs are, form this great nation, not segregated, and not divided due to their religions. The Supreme Court in this case has failed to recognize the difference between living in a pluralistic society, where teachers from various backgrounds can adhere to their religious beliefs, and teachers proselytizing in public schools. A teacher with religious or ethnic dress may be more neutral in the classroom than one who wears no physical indication of their religious beliefs. Instead, the court differentiated between the types of religious items that may be permissible in the classroom (Abdo, 2008).

The court held that "dress which is worn because of its religious importance to the teacher and conveys to children of the age, background, and sophistication typical of students in the teacher's class a degree of religious commitment beyond the choice to wear common decorations that a person might draw from a religious heritage, such as a necklace with a small cross or Star of David" (*Cooper v. Eugene Sch., 1986*). What the court did is, with all respect, allowed the wearing of religious symbols like crosses or David stars, which is not mandatory by religion, and prohibited the wearing of the hijab, which is required by the Islamic religion. Court rules are well respected but should not interfere with the highest standards given by religions, not only Islam but any other religion if these religious practices are not insulting or offensive, or assaultive to others.

Another case that involved the violation of both the first amendment and title seven of the civil rights act, is the case of *U.S. v. Board of Educ. for School Dist. of Philadelphia*, in this case, a Muslim teacher called Alima Delores Reardon, had a hard time in school in working as a substitute or a full-time teacher because she had a head scarf which covered her head, neck, and bosom leaving her face visible and a long loose dress which covered her arms to her wrists. In 1984, on three separate occasions, she was denied working as a substitute teacher because of the way she dresses, and that is considered a violation of Pennsylvania's Grab statute, which was enacted in 1895, which states that "No teacher in any public school shall wear in said school or while engaged in the performance of his duty as such teacher any dress, mark, emblem or insignia indicating the fact that such teacher is a member or adherent of any religious order, sect or denomination ... Any teacher ... who violated the provisions of this section, shall be suspended from employment in such school for the term of one year ..." (United States v. Bd. of Educ. for Sch. Dist. of Philadelphia, 1990). In this case, the court acknowledged that the Cooper court held that wearing religious garb in the classroom did not violate the Establishment Clause of the First Amendment because more is needed to constitute a forbidden sectarian influence in the classroom and determined that it need not conclude on this point since an Establishment Clause claim was not brought in the suit. Nevertheless, the court prohibited Reardon from teaching while wearing a hijab because of state neutrality concerns. Thus, like Cooper, the court rejected Reardon's right to wear a hijab even though it did not find that accommodating her religion would violate the Establishment Clause. Although the case was brought under a violation of title seven, the court focused on the first amendment. This was a clear violation of title seven, as the teacher was only suspended from being a substitute teacher solely because she was wearing a headscarf. Moreover, when congress passed the civil rights act, it made sure it was constitutional and consistent with the establishment clause, and the courts should not interpret these acts in a way that was not intended by the legislature. Justifying the suspension of Muslim teachers for wearing hijab due to neutrality reasons, and to prevent creating a hostile and religion-biased environment is like searching for a loophole inside these acts and laws that were passed for the protection of the people and to guarantee their rights.

- **Another example of Discrimination Against Muslims:**

There are many incidents where the hijab was disallowed in courtrooms. An example of this, involves Muslim jurors being disallowed in courts, and this is a clear violation of the equal protection clause in the fourteenth amendment which guarantees that juries be selected according to a nondiscriminatory criterion (Abdo, 2008). An example is the case of *People v Bennett* (N.Y.A.D. 2 Dept., July 05, 1994), in this case, one of the jurors was Muslim, and was dismissed because the prosecutor felt that her hijab showed disrespect to the proceedings. The court held that "The prosecutor stated that if a potential juror's attire were a concern to her, she would make a note of it. She did, indeed, note the potential juror's headscarf. However, she also noted that another potential juror, who was not an African American, had worn a Chicago Bulls jacket, which was enough of a concern to her to indicate it in her notes. Yet, this juror was not challenged. Another potential juror, also not an African American, had worn an earring and a tattoo, which the prosecutor noted, but he, too, was unchallenged. A third non-African American juror, was not challenged, although the prosecutor noted that he wore a hunter's shirt. There was no satisfactory reason given why these three non-African American jurors should be treated differently than the woman who wore a head scarf" (*People v. Bennett*, 1994).

However, the court did not acknowledge the problematic nature of excluding jurors based on religion, it simply stated that hijab and head scarfs should be treated as any other dress and not treated differently. The court must have realized the significance of wearing the hijab in

Islam, and that it is not only a common thing but an obligation for women with significant importance.

#### IV. Conclusion

There are several incidents where Muslims are discriminated against, especially woman, because of the hijab they wear which make it clear to anyone that these women are Muslims. Although not all discrimination cases are litigated, there should be significant scrutiny of the state courts and the supreme court to the way courts interpret the civil rights acts and the way they consider what constitutes a violation and what does not. There should be a governmental entity responsible for inspecting what statutes, which are still in force, are deemed to be unconstitutional, violative of the bill of rights, or the civil rights Act.

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